

Members

Rep. Ralph Foley, Chairperson
Rep. Eric Koch
Rep. Robert Kuzman
Sen. Joseph Zakas, Vice-Chairperson
Sen. Brent Steele
Sen. John Broden
Tim Sendak
Dave Pendergast
Tom Hardin
Chris Colpaert
Kris Fruehwald
Dan Reeves
Jim Martin
Ora Kincaid
Joseph H. Davis
Judge Tom Lowe



PROBATE CODE STUDY COMMISSION

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MEETING MINUTES¹

Meeting Date: October 10, 2006
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Ralph Foley, Chairperson; Rep. Eric Koch; Sen. Joseph Zakas, Vice-Chairperson; Sen. Brent Steele; Tim Sendak; Dave Pendergast; Dan Reeves; Jim Martin; Ora Kincaid.

Members Absent: Rep. Robert Kuzman; Sen. John Broden; Tom Hardin; Chris Colpaert; Kris Fruehwald; Joseph H. Davis; Judge Tom Lowe.

Rep. Foley called the meeting to order at 1:45 p.m. The meeting was primarily devoted to the Commission's consideration of the legislative proposals submitted by Mr. Jeff Kolb on behalf of the Indiana State Bar Association's Probate, Trust, and Real Property Section.

Rep. Foley presented Preliminary Draft (PD) 3315 which is largely a reprisal of SB 115-2006. Following a brief discussion, PD 3315 was approved in a roll call vote, 9-0.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Mr. Sendak presented PD 3316 containing proposed changes to the living will declaration form and the process under which an attending physician who refuses to withdraw or withhold life prolonging procedures may transfer care of a qualified patient to another physician who is willing to follow the instructions contained in the qualified patient's living will declaration. Following Mr. Sendak's remarks, Rep. Foley opened the floor to public testimony. Ms. Heather Macek (Indiana Hospital & Health Association), Ms. Mary Hill (St. Vincent's Hospital), and Mr. Zach Cattell (Indiana State Medical Association) all questioned the need for the proposed changes and expressed their concerns that the changes would add additional burdens to an already complex situation. In addition, Mr. Kolb reported that Indiana State Bar Association's Probate Review Committee had reviewed the PD but could not recommend its passage without more work. Rep. Foley did not submit PD 3316 to a vote.

Mr. Martin presented PD 3323 (concerning notice requirements in probate administration) which was subsequently approved in a roll call vote, 9-0.

Mr. Kolb presented PD 3329 (concerning various mailing requirements in the probate, trust, and guardianship laws), PD 3330, and PD 3337. Preliminary drafts 3330 and 3337 share some identical language authorizing the transfer of guardianship property to certain trusts or to a custodian under the Uniform Transfer to Minors Act upon the termination of the guardianship. PD 3337 also contains a proposal to permit the extension of a guardianship beyond the protected person's eighteenth birthday. The commission discussed the draft and the various ways that guardianship property may be protected without extending the guardianship itself. The Commission approved PD 3329 and PD 3330. The Commission approved PD 3329 and PD 3330 9-0 in separate roll call votes, but did not take any action on PD 3337.

Mr. Kolb presented PD 3338 (concerning the time limits for admitting a will to probate), PD 3339 (concerning the appointment of certain fiduciaries as custodians under the Uniform Transfer to Minors Act), and PD 3340. Commission discussion focused on the ability of financial institutions to match documents if the trust's taxpayer identification number is no longer a required element of a trust certification as proposed by PD 3340. The Commission was satisfied that the financial institutions would not be hindered by the proposal. The Commission approved all three drafts in separate roll call votes, 9-0.

The commission turned its attention to PD 3344 establishing a new procedure for obtaining the information necessary to determine whether a decedent's estate can be summarily administered as a small estate. Mr. Kolb reviewed the draft's contents. Mr. Pendergast suggested adding "cash" and "money market accounts" to the list of intangible properties specifically mentioned in the draft. Mr. Jim Cousins rose on behalf of the Indiana Banker's Association to inquire about the application of the procedure to safe deposit boxes. Mr. Cousins was concerned that banks could be required to appraise the contents of safe deposit boxes. Further, he was concerned that banks had only three days to comply with the discovery request. The Commission agreed that safe deposit boxes presented unique problems and decided to exempt them from the discovery procedure. However, the Commission could not be persuaded that additional time was necessary for compliance with the discovery request. The Commission also agreed to Mr. Pendergast's proposed changes to the draft. The amended draft was approved in a roll call vote, 9-0.

Mr. Kolb described the subject of PD 3345 as a glitch in the code for 50 years. The PD removes from the Indiana Code a provision under which a personal representative is not authorized to possess property subject to the surviving spouse and family allowances. Mr. Kolb explained that this provision is in conflict with the statute concerning the payment of claims against the estate. Mr. Sendak expressed his fear that surviving spouses who are

not on the deed may be removed from their homes. The Commission approved PD 3345 in a roll call vote, 9-0.

The Commission then discussed the state tax implications of the federal estate tax and its scheduled demise in 2010 and resurrection in 2011. Mr. Kolb described the decoupling of state and federal estate taxes that has occurred in a few states. Mr. Reeves indicated that he would like to reconsider a resolution urging the General Assembly to repeal the inheritance tax. With only nine members present on September 19, a single negative vote prevented the passage of the resolution at the Commission's first meeting. On this day, however, the Commission approved the resolution in a roll call vote, 9-0.

Passage of the recommendation to repeal the inheritance tax concluded the Commission's business. Rep. Foley adjourned the meeting at 4:05 p.m.